

DICK WALKER AND ASSOCIATES WIN MINING SUIT

Courts Hands Down a Decision Yesterday Morning, Settling Controversy Over Four Claims in Golden Arrow District.

Judge Mark Averill, of the Fifth Judicial District court, yesterday handed down his decision in the case of Tage Holtberg et al., versus D. H. Walker et al., which was in favor of the defendants. Four mining claims in the Golden Arrow district were in dispute. They were located by the plaintiffs on January 25, 1910 and covered the same ground as located by the defendants some time previous. The opinion as handed down by the court is as follows:

In this case two theories have been advocated by counsel for defendants, under either or both of which he claims judgment for his clients.

Under the first theory he argues that a "resumption" such as is shown by the evidence here is sufficient to defeat the claims of the relocators. He makes little distinction between "resumption of possession" and "resumption of work." There is evidence of a "resumption of possession" by the defendants, but very little, if any, of "resumption of work." I consider it safe to say that there is no such thing known to the mining law as a "resumption of possession" except to the extent that resumption of possession is included in a resumption of work. "Resumption of work" avails nothing to the defendants in this case, the modern law being fully stated by Lindley on page 1222, as follows:

"The right to resume work is lost where a qualified relocator enters and initiates a relocation. A resumption between the initiation and final acts of relocation will not avail."

This is Lindley's conclusion after a review of all of the cases in which "resumption of work" is discussed. He criticizes some of them severely especially Belcher company versus Deferrari, which Mr. Morrison in his "Mining Rights" characterizes as "trifling," and he does not spare Judge Hawley's questionable motion of revivor in Justice Mining company versus Barclay. 1 Lindley on Mines 736, 737. 2 Lindley on Mines 1154, 1222.

The second theory of counsel for defendants arises from the well settled doctrine of mining law "that forfeiture cannot be established except upon clear and convincing proof of the failure of the former owner to have work performed or improvements made to the amount required by law. The courts do not incline to the enforcement of this class of penalties, which have always been deemed in law odious." "Where either abandonment of forfeiture is relied upon the burden of proof rests with the party asserting it."

Acting under this theory counsel

for defendants refused to put in any evidence to show that the annual labor for 1909 was performed upon the claims in dispute.

In my opinion I consider that, while this doctrine is in general a sound one, the courts have gone altogether too far in extending it to many of the cases decided almost wholly upon it, and not either upon evidence or common sense. Lindley expresses himself to the same effect on page 736 and elsewhere in his work.

In this case I must under this doctrine decide in favor of the defendants, but I do so reluctantly and without that personal satisfaction a judge generally takes in the decision of a case upon its merits.

The defendants could readily have put in their evidence to prove that the work had been done on their claims in 1909, if such was the case. By not doing so they left the case to be decided upon the strength of a doctrine that has had more favor from the courts than it deserves.

The evidence of the plaintiffs is not altogether convincing that the work was not done. It admits that part was done—how much it is hard to say. Bob Walker's work alone, giving it the most favorable recognition possible, was not enough as it was not to exceed \$200, including necessary mining supplies, the figure stated being an exceedingly liberal one. There was no proof, however, except the appearance of the working on the ground, to show that some of the owners had not done additional work. Bob Walker's admission in December, 1909, after about two weeks' work, that he had nearly finished, has of course no bearing upon what Snyder or others might previously have done; and the fact is apparent that a goodly amount of work had been done on the claims, a condition of things favorable to the defendants, and one that adds difficulty to a decision of the case, in that it is impossible for the court to determine when it was done under the present state of the proof.

In conclusion I desire to say that I greatly dislike to decide a case upon a purely technical position taken by counsel, such position being about as repugnant as forfeitures and nonsuits, but far prefer to have both sides fully presented, and then decide upon the merits.

However, I must decide in favor of the defendants, holding that the proof of failure to do the assessment work for 1909 on the Euclid and Tin Horn claims is not so clear and convincing that a forfeiture of the claims may be declared. Therefore, the ground was not open to location in January, 1910, and the plaintiffs' Mayflower claims are invalid.

ONLY ONE CASE IN THE JUSTICE COURT

P. Plamanaz, dishwasher at the Montana cafe, was arrested yesterday on a complaint sworn to by Nick Rafaelovich, who stated that the dishwasher had assaulted him with a drawn knife. According to the story of several witnesses, the altercation consisted solely of an argument and that no blows were struck. The alleged trouble happened Sunday night and when the case was called yesterday afternoon in the justice court, it was dismissed as no evidence was presented substantiating the allegations of the complaining witness.

IN POOR HEALTH.

Receiver Frank Wildes of the State Bank and Trust company, and his wife have gone to San Francisco. Mr. Wildes has been far from well for some time and goes below in hopes that a change of climate will work for his welfare.

LITTLE TOTS HAVE CONTRACTED NEW AILMENTS

**CHILDREN AFFLICTED WITH
COMPLICATIONS UNKNOWN
TO MEDICAL LORE.**

The little people of Tonopah have been the victims in large numbers lately of chickenpox, measles, etc., etc. Two of them now ill have declared themselves afflicted with new and startling complications, much to the amusement of family and friends.

A little girl who has been quite seriously ill with inflammation of the stomach and bowels has been quieted constantly with this assurance:

"Be patient, dearie, the pain will be better soon, it is just gas on your stomach."

Last evening there came a shriek from the crib. The startled mother who ran to the tiny invalid was greeted with the following:

"Oh, mamma," wailed the tot, "I'm much worse. The gas is in my forehead now."

Some days ago George Malley, son of the chief, was visiting his aunt, Mrs. Frank Walsh. Late in the afternoon she noticed that he was blue, shivering with cold and looking generally dejected and much inclined to moan about the stove.

"George," said the anxious aunt, "you look to me like a child coming down with the grippe." He made no reply but felt so badly that soon he went home.

He had been but a short time with his mother when she detected that he was not glad and happy.

"What is the matter, George?" she asked. "You look sick."

"I am," replied the little man. "Aunt Mary said I had the trunk."

LITTLE MISS ENTERTAINS AT BIRTHDAY PARTY

Little Miss Luella Roberts entertained a large number of her friends at her home on South street Saturday evening in honor of her ninth birthday and the time was delightfully spent with numerous games, followed by a luncheon. Among the guests who gathered to pay their respects to the young hostess were Tommy O'Connell, Burgen O'Connor, Francis Hallihan, Omar Fuller, Harold Jones, Blanche Collins, Evaline Collins, Geraldine Smith, Grace Fowler, Delphine Fowler, Mary Nichols, Bernice Pengilly and Aileen Dalzell.

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RETURNS AFTER FIVE MONTHS' TRIP ALONG COAST

**NYE COUNTY'S OLDEST RESIDENT RETURNS TO THE
DESERT COUNTRY.**

Joseph T. Williams, who enjoys the distinction of being the oldest living resident of Nye county, arrived Sunday evening, accompanied by Mrs. Williams, from a five months' absence spent in southern California and Mexico. Mr. and Mrs. Williams reside at Hot Creek, where they have recently constructed a mansion that surpasses any like dwelling in the state, and to which they will return today.

Mr. Williams has resided in the state of Nevada since 1863 and was a member of the first legislature. He aided in drafting the original state constitution when statehood was practically thrust upon this commonwealth. Of late years he has not participated to a very great extent in politics, being content to look after his vast interests of farming and mining lands. He is the owner of the largest ranch in the Hot Creek district and is also heavily interested in the cattle business.

Mr. and Mrs. Williams were met here yesterday by their son, J. T. Williams Jr. who will accompany his parents home.

Under Sheriff Vail Pittman went to Goldfield yesterday morning on business connected with the sheriff's office. He will return today.

MISCELLANEOUS

WANT TO RENT—3 or 4 room furnished house, will lease. Box 910. 2t

FOR RENT—Three-room modern house, with bath, furnished, \$17.50 S. R. Moore & Co. 4-12tf

FOR RENT—Piano in first class condition. S. P. Moore & Company. 4-12tf

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WANTED—Clean cotton rags, without buttons; 3 cents a pound. Bonanza office.

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SURVEY OF PROPOSED ROUTE IS COMPLETED

**ENGINEERING PARTY OF T. &
G. ROAD BACK FROM MONO
LAKE SECTION.**

The surveying crew of the Tonopah and Goldfield railroad, that have been engaged for the past several months in determining a route from Tonopah Junction to the Mono Lake district, have returned to this city. A feasible route was found and the report will now be sent to the directors of the company at Philadelphia, and may probably come up for discussion at the meeting in the latter part of this month. The original time for completing the survey was extended about two months, owing to the work being delayed by the heavy snows, through which the course lay. The work was carried out under the supervision of R. W. Cattemole, a civil engineer of note, who previously had been engaged in a number of like projects in the east.

S. S. May, who visited the Cactus Springs district last week, returned to Tonopah Saturday.

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